CAUSE NO. D-1-GN-06-002209

| | | |
|---|---|---|
| JANE DOE, Individually, and<br>As Next of Friend of JULIE DOE, a Minor;<br><br>Plaintiffs, | § | IN THE DISTRICT COURT OF |
| v. | § | TRAVIS COUNTY, TEXAS |
| MYSPACE, INC.;<br>NEWS CORPORATION; and<br>PETE I. SOLIS<br><br>Defendants. | § | 261ST JUDICIAL DISTRICT |

FILED
06 SEP -1 AM 10: 25
[signature]
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

**PLAINTIFFS' FIRST AMENDED**
**RESPONSE TO DEFENDANTS' SPECIAL EXCEPTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs, Jane Doe, individually, and as next of friend of Julie Doe, a minor ("Plaintiffs"), and in Response to Defendants' Myspace, Inc. and News Corporation ("Defendants") Special Exceptions to Plaintiffs' First Amended Original Petition, Plaintiffs would respectfully show the Court as follows:

## ARGUMENT AND ANALYSIS

### All of Plaintiffs' Claims are Valid and Cognizable

1. Pursuant to T.R.C.P. 47, Plaintiffs' First Amended Original Petition has given Defendants fair and adequate notice of each of Plaintiffs' claims as required by the Texas Rules of Civil Procedure and Texas law. T.R.C.P. 47; *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982) ("A petition is sufficient if it gives fair and adequate notice of the facts upon which the pleader bases his claim."); *Paramount Pipe & Sup. Co. v. Muhr*, 749 S.W.2d 491, 494-95 (Tex. 1988) (T.R.C.P. 45 does not require the plaintiff to detail the evidence in its petition). All of Plaintiffs' claims asserted in Plaintiffs' First Amended

Dockets.Justia.com

Original Petition are based on Texas common-law. Defendants' complaints that Plaintiffs fail to state cognizable theories of recovery for negligence, gross negligence, fraud, fraud by nondisclosure and negligent misrepresentation are erroneous and unsupported and therefore should be denied.

**The Communications Decency Act ("CDA") Does Not Apply to Plaintiffs' Claims**

2. The CDA does not immunize Defendants from any of Plaintiffs' claims. The factual and legal claims asserted by Plaintiffs in Plaintiffs' First Amended Original Petition, taken as true, defeat any argument by Defendants to the contrary. Furthermore, the Defendants have not presented any evidence or case law to support their claim of immunity. As such, Defendants' claim they are immunized from all of the claims asserted by Plaintiffs in Plaintiffs' First Amended Original Petition are groundless and therefore should be denied.

**Defendants' Breach of Duty Proximately Caused Plaintiffs' Injuries**

3. Defendants' naked claims that under Texas law they did not owe a duty to Plaintiffs for their negligent, grossly negligent and fraudulent conduct, or that their unlawful conduct was not the proximate cause of Plaintiffs' injuries is categorically false. Defendants owed a duty to Plaintiffs. Defendants clearly breached this duty by their negligent, grossly negligent and fraudulent conduct. Defendants' breach caused Plaintiffs' significant injuries. Texas common-law strongly supports each of Plaintiff's claims against Defendants.

4. Moreover, the factual and legal claims asserted by Plaintiffs in Plaintiffs' First Amended Original Petition, taken as true, defeat any argument by Defendants to the

contrary. Defendants have not presented any evidence or case law to support their claims as they are all groundless and therefore should be denied.

**Prayer for Relief**

For the foregoing reasons, Defendants' special exceptions to Plaintiffs' First Amended Original Petition should all be DENIED.

DATED: September 1, 2006

Respectfully submitted,

Adam J. Loewy
State Bar No. 24041353
Carl R. Barry
State Bar No. 24036192
BARRY & LOEWY LLP
One Congress Plaza
111 Congress Avenue, Suite 400
Austin, Texas 78701
(800) 892-5044

Kurt B. Arnold
State Bar No. 24036150
Jason A. Itkin
State Bar No. 24032461
ARNOLD & ITKIN LLP
700 Louisiana Street, Suite 4700
Houston, Texas 77002
(713) 222-3800

**ATTORNEYS FOR PLAINTIFFS**

## CERTIFICATE OF SERVICE

This is to certify that on this the 1st day of September, 2006, a true and correct copy of the above and foregoing was properly forwarded to the following counsel of record in accordance with the Texas Rules of Civil Procedure as indicated below:

***VIA FACSIMILE AND/OR CERTIFIED U.S. MAIL***

Michael D. Marin
Susan Denmon Gusky
Christopher V. Popov
Vinson & Elkins L.L.P.
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746

Pete I. Solis
*Pro Se*
160 Calderon
Buda, Texas 78610

Carl R. Barry